

In Re: Case No. 04-34992
Steven P Klostermeier
and Karrie M Klostermeier,
Debtors, Chapter 13 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY

- TO: Debtor(s) and other entities specified in Local Rule 9013-3.
1. Huntington National Bank moves the Court for the relief requested below and gives notice of hearing.
 2. The Court will hold a hearing on this motion on October 25, 2004 at 10:30 AM o'clock, in Courtroom No. 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, MN.
 3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
 4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 25, 2004. The case is now pending in this court.
 5. This motion arises under 11 U.S.C. §362(d), §365(a) and (d), and Fed. R. Bankr. P. 4001 and 6006. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay of §362(a), to terminate the lease and to repossess the 2001 Dodge Durango 4WD 4D vehicle leased to Debtors, and requests the court permit Movant to immediately enforce the order requested, without the 10 day stay

imposed by Rule 4001(a)(3).

6. Movant requests relief under §362(d)(2). Debtors have no equity in the vehicle and the vehicle is not necessary to an effective reorganization. Movant requests relief for cause under §362(d)(1). Failure to provide adequate protection or adequate assurance of future performance under the Lease constitutes cause.
7. If testimony is necessary as to any facts relevant to this motion, the person who signed the verification to this motion or some other representative for Movant, from Movant's offices in Minnesota, will testify regarding the Lease terms and default.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the property promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

WHEREFORE, Huntington National Bank moves the Court for an order modifying the automatic stay of §362(a) and the codebtor stay of §1301(a), if applicable, and such other relief as may be just and equitable.

Dated: October 6, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

2049165C0018
STATE OF MICHIGAN
CERTIFICATE OF TITLE

12-1-36573

YEAR	MAKE	MODEL	VEHICLE IDENTIFICATION NUMBER
2001	DODGE		1B4HS28N71F512875 *
BODY STYLE	WEIGHT/FEE CATEGORY	ODOMETER	TITLE NUMBER
FOUR DOOR	27	000229 11/09/2000	202L3130047 AS
OWNER(S) NAME AND ADDRESS *ACTUAL MILEAGE*			

HUNTINGTON LT LESSOR
KARRIE & STEVEN KLOSTERMEIER/LESSOREE
312 EDGEMOOR AVE
KALAMAZOO MI 49001

First Secured Party	Filing Date
HUNTINGTON LT 7450 HUNTINGTON PARK COLUMBUS OH	11-08-2000 43235
Release of First Lien:	
X _____	_____ Signature of Agent _____ Date _____

Title Assignment by Seller

State and federal laws require the seller(s) to indicate mileage when ownership is transferred. Failure to complete or providing false information may result in civil liability, fines and/or imprisonment. ANY ALTERATION, ERASURE, FALSE STATEMENT, FORGERY OR FRAUD VOIDS THIS TITLE AND IS A CRIME.

I warrant that the ownership of the vehicle described on Certificate of Title has been transferred to the following purchaser(s) and is free of all previous liens. Printed Name of Purchaser(s)			
Purchaser's Street Address	City	Date of Sale	Selling Price
I (we) certify that the odometer reading is: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="checkbox"/> and that to the best of my knowledge the odometer reading is: (No Tach) <input type="checkbox"/> actual mileage <input type="checkbox"/> not actual mileage - WARNING ODOMETER DISCREPANCY <input type="checkbox"/> exceeds mechanical limits of odometer (odometer has rolled over)			
Signature of Seller(s) X _____	Printed Name of Seller(s)		
Seller's Street Address	City	State	Zip
A \$15.00 Late Fee is Due for Failure to Apply for Title Within 15 Calendar Days of Date of Assignment *I am aware of the above odometer certification made by the seller(s)*			
Signature of Purchaser(s) X _____	Printed Name of Purchaser(s)		
NEW LIENHOLDER INFORMATION: The information below must be on an application for title and presented to the Michigan Department of State			
Secured Party:	Address:		

The State of Michigan, Michigan Department of State certifies that this certificate of title is issued in compliance with the laws of Michigan and constitutes prima facie proof of ownership. Further, on the date of title issuance, the described vehicle was subject to the security interest(s) listed above.

MAILING ADDRESS

G38811575

HUNTINGTON LT
7450 HUNTINGTON PARK DR ATT HZ0112
COLUMBUS OH 43235

**** NOTICE TO SELLERS****
Sellers should keep a receipt or photocopy of
the reassigned title for their records.

DO NOT ACCEPT TITLE SHOWING ANY ERASURES, ALTERATIONS OR MUTILATIONS

**EXHIBIT A**

MOTOR VEHICLE LEASE AGREEMENT - CLOSED-END (GAP WAIVER)

(10)
Warranties
Waived

LESSOR AND LESSEE		LEASE AND DOLLAR		LEASE DATE
LESSOR	NAME: HUNTINGTON LT	LESSOR AND DOLLAR	NAME: KARRIE M KREAR-KLOSTERMEIER	11/02/00
Address:	7450 HUNTINGTON PARK DRIVE	Address:	STEVEN P KLOSTERMEIER	VEHICLE GARAGING ADDENDUM
THE RENTAL TERM BEGINS ON 11/02/00 AND ENDS ON 10/02/01.		Address:	PO BOX 312 NEDGEWOOD AVE	From Lessee's Return
IF THIS DATE IS CHECKED, THIS LEASE WILL BE		Address:	KALAMAZOO MI 49001	Driver Name:
RENTED FOR A PERIOD OF ONE YEAR AND NO MONTHS.		Address:	KALAMAZOO MI 49001	Address:
		County:	KALAMAZOO	County:

The words "you" and "your" mean each person named as a Lessor or Lessee above. The words "we," "us" and "our" mean the Lessor named above and the Lessee named above. "Lease" means this Motor Vehicle Lease Agreement. "Vehicle" means the leased vehicle described below, including all equipment, parts and accessories. You agree to treat the Vehicle from time up according to the terms and conditions of this Lease.

A. VEHICLE DESCRIPTIONS

<input checked="" type="checkbox"/> NEW	YEAR	Make	Model	Body Style	Odometer Reading	Vehicle Identification Number
	2000	HODGE TRUCK	DURANGO	A DR	222	1E4HS2B07UL512075

The Vehicle will be used primarily for personal, family or household purposes. However, if the following box is checked, the Vehicle will be used primarily for business, agricultural or commercial purposes:

B. TRADE-IN VEHICLE: YEAR	1986	Make	FORD	Model	EXPLORER
2. AMOUNT DUE AT LEASE SIGNING OR DELIVERY		C. MONTHLY PAYMENT		D. OTHER CHARGES	
(Itemized Below)		A. YOUR FIRST MONTHLY PAYMENT OF \$ 321.25 DEPOSSED ON THE LEASE DATE, FOLLOWED BY \$ 446.25 PER MONTH OF EACH MONTH.		(NOT PART OF YOUR MONTHLY PAYMENT)	
		B. YOUR TOTAL MONTHLY PAYMENTS IS \$ 3212.51		C. VEHICLE HANDLING FEE * \$ 300	
				D. VEHICLE USE FEES * \$ 300	
				E. TOTAL OF PAYMENTS \$ 32064.26	

7. ITEMIZATION OF AMOUNT DUE AT LEASE SIGNING OR DELIVERY	
A. Amount Due at Lease Signing or Delivery:	B. Itemization of Amount Due at Lease Signing or Delivery:
(1) Capitalized Cost Reduction	3 2000.00
(2) First Monthly Payment	446.25
(3) Security Deposit	446.25
(4) Initial Title, Registration and License Fees	1.00
(5) Huntington Acquisition Fee	N/A
(6) Dealer Documentation Fee	10.00
(7) Balance Due on Capitalized Cost Reduction	121.20
(8) Uniform Occupancy Tax on Vehicle	N/A
(9) Luxury Tax on Vehicle	N/A
(10) N/A	
(11) Total	3 3212.51
	← MUST BE EQUAL →
	(e) Total ... 3 3212.5

A. YOUR MONTHLY PAYMENT IS DETERMINED AS SHOWN BELOW:	
If you want an itemization of this amount, please check the box.	
(1) Capitalized Cost Reduction	3 2000.00
(2) First Monthly Payment	446.25
(3) Security Deposit	446.25
(4) Initial Title, Registration and License Fees	1.00
(5) Huntington Acquisition Fee	N/A
(6) Dealer Documentation Fee	10.00
(7) Balance Due on Capitalized Cost Reduction	121.20
(8) Uniform Occupancy Tax on Vehicle	N/A
(9) Luxury Tax on Vehicle	N/A
(10) N/A	
(11) Total	3 3212.51
	← MUST BE EQUAL →
	(e) Total ... 3 3212.5

B. YOUR MONTHLY PAYMENT IS DETERMINED AS SHOWN BELOW:	
If you want an itemization of this amount, please check the box.	
(1) Capitalized Cost Reduction	3 2000.00
(2) First Monthly Payment	446.25
(3) Security Deposit	446.25
(4) Initial Title, Registration and License Fees	1.00
(5) Huntington Acquisition Fee	N/A
(6) Dealer Documentation Fee	10.00
(7) Balance Due on Capitalized Cost Reduction	121.20
(8) Uniform Occupancy Tax on Vehicle	N/A
(9) Luxury Tax on Vehicle	N/A
(10) N/A	
(11) Total	3 3212.51
	← MUST BE EQUAL →
	(e) Total ... 3 3212.5

Early Termination. You may have to pay a substantial charge if you end this lease early. The earlier you end the lease, the greater this charge is likely to be.

The annual charge will depend on what the lessor is terminating. The earlier you end the lease, the greater this charge is likely to be.

A. EXCESSIVE WEAR AND USE
You may be charged for excessive wear and use standards for normal use and for mileage in excess of:

Standard Mileage Allowance: 1,250 miles per month, at the rate of \$0.12 per mile

Low Mileage Allowance: 1,000 miles per month, at the rate of \$0.12 per mile plus \$0.10 per mile over the rate of \$0.12 per mile

High Mileage Allowance (Standard, Low, or Plus): \$0.12 per mile plus \$0.10 per mile over the rate of \$0.12 per mile

B. PURCHASE OPTION AT END OF LEASE TERM
If you have paid the total of your monthly payments and all other amounts due under this lease, you have an option to purchase the vehicle at the price set forth in the lease.

If you have paid the total of your monthly payments and all other amounts due under this lease, you have an option to purchase the vehicle at the price set forth in the lease.

If you have paid the total of your monthly payments and all other amounts due under this lease, you have an option to purchase the vehicle at the price set forth in the lease.

Other important terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

C. FLEXIBLE MILEAGE ALLOWANCE CHOICE
If you selected the Flexible Mileage Allowance in Section B above, you are subject to paying a credit if the actual average miles driven per month exceed the greater of either the actual average mileage driven per month of 1,250 miles per month or the standard mileage allowance.

Only the difference between the actual average mileage driven per month and the standard mileage allowance will be charged.

D. CREDIT ESTIMATE
The total estimated amount you will pay for official and license fees, registration, title and taxes over the term of your lease, whether included with your monthly payments or payment otherwise.

The actual amount you must pay may be higher or lower depending on the rates in effect and/or the value of the vehicle when a fee or tax is imposed or decreased.

E. WARRANTIES
If the manufacturer law, it is limited by the standard manufacturer's new vehicle warranty. This vehicle is not covered by any other express warranties or implied warranties identified below.

The vehicle is used and is covered by the warranty of the standard manufacturer's new vehicle warranty.

F. NO ADDITIONAL WARRANTIES OR REPRESENTATIONS, EITHER EXPRESSED OR IMPLIED, ARE MADE AS TO THE VEHICLE OR ANY PART OR ACCOMPANYING DOCUMENTS, WHETHER IN WRITING, ORAL, OR BY IMPLICATION, WHETHER EXPRESSLY OR BY OPERATION OF LAW, OR OTHERWISE, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. IF THIS LEASE IS SIGNED IN WEST VIRGINIA, WE DO NOT EXTEND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

G. INSURANCE VERIFICATION
The vehicle is insured by:

Agent's Name:	GENERAL	Agent's Telephone No.:	800-521-8112
Agent's Address:	9800 FREDERICKSBURG RD SAN ANTONIO, TX 78204	Policy Number:	TX000 CASUALTY 80028692 80732 52 03C 2102

You authorize lessor to verify and give your name authorization to insure the vehicle for the minimum coverage required by this lease.

H. CREDIT POLICY
If you do not make the payment when due, we will charge you a late fee of \$15.00 plus 15% of the amount due.

We will not accept a late payment after the 15th day of the month following the due date.

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We will not accept a late payment after the 15th

04-03994-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Steven P Klostermeier
and Karrie M Klostermeier,
Debtors,

Case No. 04-34992

Chapter 13 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Donna Baldwin, Bankruptcy Specialist for Huntington National Bank, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account no. 12-12 0001 36573.
2. The Debtor leases a 2001 Dodge Durango 4WD 4D vehicle from the Creditor. The monthly lease payment is \$449.06. As of September 22, 2004, the lease payments are delinquent \$1,397.18 for payments owing since July 15, 2004, including late charges. The Creditor owns the leased vehicle. The current NADA published retail value for the leased vehicle is \$16,200.00. The Debtor is believed to be in possession of the vehicle.
3. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the lease documents are attached as Exhibit "B".
4. The proposed Chapter 13 Plan states the lease is rejected and that Debtors will surrender the vehicle. They have not surrendered it.

Dated: 9-30-04

Donna Baldwin
Donna Baldwin
Bankruptcy Specialist for Huntington National Bank
6101 West 130th St
Cleveland, OH 44101

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Steven P Klostermeier
and Karrie M Klostermeier,
Debtors,

Case No. 04-34992
Chapter 13 Case

MEMORANDUM OF FACT AND LAW

Huntington National Bank ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

FACTS

Debtor's Chapter 13 Plan has been filed with the Court. The plan provides for rejection of the lease and states Debtors will surrender the vehicle.

Debtor is in possession of the vehicle subject to a lease agreement dated 11/03/00, and such agreement is a true lease, and not a retail installment contract, as defined by Minn. Stat. §336.2A - 103(j) and §168.66. Movant is the registered owner of the vehicle as reflected by the Certificate of Title. According to the terms of the lease, Debtor is to make monthly payments of \$449.06 for use of the vehicle. Debtor must also pay for any excess mileage and excess wear and tear at termination of the lease. Debtor has the option to purchase the vehicle at the end of the lease agreement by paying the purchase option price in cash.

Debtor is delinquent on lease payments due since July 15, 2004. The NADA retail value of the vehicle is \$16,200.00. NADA pages for this vehicle value are attached as Exhibit "C".

Movant's interest is subject to depreciation in that the vehicle is being used, subjecting it to wear and depreciation, while Debtor is failing to make payments.

ARGUMENT

Pursuant to §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property

of such creditor." 11 U.S.C. §362(d)(1).

Debtor has indicated an intent to reject Movant's lease, has failed to make the Lease payments to Movant and has failed to provide adequate protection of Movant's interest in the vehicle or adequate assurance of future performance under the Lease. Such circumstances constitute cause, within the meaning of §362(d)(1), entitling Movant to relief from stay. In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991).

If a lessor is economically disadvantaged by a Debtor retaining leased property without making payments, the lessor can move for relief from the automatic stay under §362(d). In re Intran Corp., 62 B.R. 435, 436 (Bkrcty. D.Minn. 1986). Adequate protection is the "safeguard" to protect a lessor and moving for relief from the automatic stay or seeking adequate protection is the proper method by which a lessor may force the debtor to either surrender the leased property or make payments equal to the lessor's interest in the property. Id. at 436.

Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor has no equity in the vehicle and the vehicle is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In re Gellert, 55 B.R. 970 (Bkrcty.D.N.H. 1983). Debtor has no equity in the vehicle. No evidentiary hearing is required on the issue of equity unless the debtor disputes it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997).

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: October 6, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Steven P Klostermeier
and Karrie M Klostermeier,
Debtors,

Case No. 04-34992
Chapter 13 Case

UNSWORN CERTIFICATE OF SERVICE

I, Linda Jeanne Jungers, declare under penalty of perjury that on October 7, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Steven P Klostermeier
512 13th Street
Farmington, MN 55024

Karrie M Klostermeier
512 13th Street
Farmington, MN 55024

Robert N Schway
SCHWAY & COWLE, LTD
2071 Burnsville Center
Burnsville, MN 55306

Jasmine Z. Keller
Chapter 13 Trustee
12 S. 6th St #310
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Executed on: October 7, 2004

Signed: /e/Linda Jeanne Jungers
Linda Jeanne Jungers
STEWART, ZLIMEN & JUNGERS
430 Oak Grove Street, #200
Minneapolis, MN 55403

In Re:
Steven P Klostermeier
and Karrie M Klostermeier,
Debtors,

Case No. 04-34992
Chapter 13 Case

ORDER FOR RELIEF FROM THE STAY

Huntington National Bank's Motion for an order granting relief from the stay came before the Court on October 25, 2004 at 10:30 AM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Huntington National Bank to terminate the Lease, and to repossess and sell the

2001 Dodge Durango 4WD 4D vehicle, VIN 1B4HS28N71F512875

in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

United States Bankruptcy Judge